Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

80-1073

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

JOSEPH N. MARCAL, III,

Petitioner,

vs.

STATE OF LOUISIANA,

Respondent.

Appeal from the Supreme Court of

Louisiana

APPENDIX

APPENDIX "A"

STATE OF LOUISIANA

vs. NO. 64,318

JOSEPH N. MARCAL, III

On Appeal From the Criminal District Court, Parish of Orleans
Honorable Charles R. Ward, Judge

January 28, 1980

BLANCHE, Justice.

The defendant was convicted after a bench trial of two counts of public bribery in violation of La. R.S. 14:118. He was sentenced to one year at hard labor on each count, the sentences to run concurrently. The first count of the indictment alleged that on or about March 20, 1975, the defendant paid Mrs. Dorothy Boyd, an Orleans Parish Deputy Clerk of

Court, two hundred dollars in cash to assign one of his cases to a particular section of Criminal District Court. The second count alleged that that identical offense took place on May 16, 1975 and that the defendant gave Mrs. Boyd a check for two hundred dollars.

Mrs. Boyd testified, under a grant of immunity, that she had assigned the cases as Mr. Marcal requested and that he had paid her for these services. Her testimony was corroborated by other state witnesses. The defendant's former secretary, Mrs. Beatty, testified that on the date of the first allotment, the defendant had taken two hundred dollars from his law office. Later, she claimed he told her that he had used the money to bribe Mrs. Boyd. On May 16, 1975, the

defendant asked Mrs. Beatty to stay late to give an envelope to Mrs. Boyd. Mrs. Beatty testified that she had opened the envelope and found a two hundred dollar check payable to Mrs. Boyd on Mr. Marcal's Attorney-at-Law account. She further testified that she gave the envelope to Mrs. Boyd. Mr. Mitchell, an attorney who had rented office space from the defendant, testified that the defendant often boasted that he could have cases assigned to a particular section and that he had witnessed the May 16 transfer of the check.

The defendant argued both alibi and the lack of credibility of the witnesses. Both Mrs. Beatty and Mr. Mitchell admitted to having financial disputes with the defendant. Further, the state failed

to produce the check or any records from the banks which would verify its existence. On appeal, the defendant has urged fifteen assignments of error.

* * * * * *

Assignment of Error Number 22

The defendant contends that the trial court erred in denying his motion for a new trial, made onn the grounds that the verdict was contrary to the law and evidence.

On appeal, this Court's jurisdiction is limited to questions of law; therefore, if there is some evidence proving the essential elements of the crime, no question of law is presented, sufficiency of the evidence being a matter to be decided by the trier of fact. State v. Victor, 368 So.2d 711 (La. 1979); State

v. Madison, 345 So.2d 485 (La. 1977). It follows that on review of a denial of a motion for a new trial, this Court will not review the sufficiency of the evidence presented to the trial court but will simply determine if there is some evidence of each element. State v. Mouton, 366 So.2d 1336 (La. 1978); State v. Banks, 362 So.2d 540 (La. 1978). A review of the record reveals there was some evidence of every essential element of the crime on both counts. La. R.S. 14:-118 in pertinent part provides as follows:

> "Public bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any of the following persons, with the intent to influence his conduct in relation to his position, employment or duty: (1) Public officer or employee; or ..."

Mrs. Boyd's testimony at the trial revealed that Mrs. Boyd was a public employee and that the defendant paid her the sum of two hundred dollars on both occasions in question to alter the allotment of cases in Criminal District Court. Therefore, since there is some evidence of each and every element of the crimes charged, the assignment is without merit.

* * * * * *

For the reasons above, the conviction and sentence of the defendant are affirmed.

AFFIRMED.

SUPREME COURT OF LOUISIANA

NO. 64,318

STATE OF LOUISIANA

VERSUS

JOSEPH N. MARCAL, III

DENNIS, Justice, concurring.

When the defendant's motion for a new trial is examined on the merits, as required by the recent Supreme Court case of Jackson v. Virginia, 25 Cr.L. 3229 (decided June 28, 1979), which held that the Fourteenth Amendment's due process clause requires that a criminal conviction be based on "sufficient evidence to justify a rational trier of the facts . . . (finding) guilt beyond a reasonable

doubt," I conclude that, although the state presented a weak case, a rational trier of fact could have found guilt beyond a reasonable doubt.

APPENDIX "B"

SUPREME COURT OF LOUISIANA

No. 64318

STATE OF LOUISIANA JUNE 23, 1980

Versus

JOSEPH N. MARCAL, III

ON REHEARING

DIXON, Chief Justice

Rehearing was granted in this case to reconsider defendant's Assignment of Error No. 3 complaining of the denial of his motion to recuse the district attorney.

Defendant argues that there was such animosity on the part of the district

attorney toward the defendant, and such a "long standing vendetta," that the grounds for the recusal of the district attorney described in C.Cr.P. 680(1)1 were present. The "personal interest" and inimosity, it is argued, resulted from a prosecution of one Villarubia, a matter in which the wife of the district attorney had been interested as an attorney, having represente, as a lawyer, some of the parties involved. Mrs. Connick had testified, it is alleged, and defendant accused her of perjury, and sought her prosecution, which should have caused the district attorney to become so hostile and full of animus toward the defendant that he could not prosecute fairly and impartially.

The record does not support the

defendant's complaint, nor his argument. On the motion to recuse, only the district attorney and some assistants, and one Baumler, testified. The district attorney testified that he had known defendant for a number of years, and held no personal animosity toward him. His testimony was neither shaken nor contradicted.

The assistant district attorneys only testified to a meeting with Mr. Baumler, who was representing the defendant. At this meeting, the assistant district attorneys informed Mr. Baumler that there was an investigation into allegations of criminal conduct involving defendant and others. The assistant district attorneys inquired of Baumler whether Marcal would consider cooperating

with the prosecution in return for some limited grant of immunity.

No other evidence was offered. There is no evidence in this record to support a contention that the district attorney had such personal animosity that his personal interest conflicted with the fair and impartial administration of justice. In fact, there is no evidence in the record that Mr. Connick himself participated in any way in initiating or deciding to proceed with this prosecution against the defendant. Mr. Connick did not know about the facts of this case until after the investigation of the charges against defendant had been commenced by the district attorney's staff.

The defendant bears the burden of proving that the district attorney has a

personal interest in conflict with the fair and impartial administration of justice. State v. Snyder, 256 La. 601, 237 So.2d 392 (1970). There is no error in the trial court's ruling on the motion to recuse.

Our original opinion is reinstated, and the conviction and sentence of the defendant are affirmed.

APPENDIX "C"

IN THE SUPREME COURT OF LOUISIANA

NO. 64,318

STATE OF LOUISIANA,

Appellee,

vs.

JOSEPH N. MARCAL, III,

Appellant.

On Appeal from the Criminal District Court for the Parish of Orleans Honorable Byron Bourg, Judge ad hoc

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Joseph

N. Marcal, III, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment on rehearing reinstating the original judgment of this Court rendered on January 28, 1980, affirming the judgment of conviction, which final judgment was entered on June 23, 1980.

This appeal is taken from the portion of the judgment holding that Article 5, Section 5(C) of the Louisiana Constitution of 1974, barred review of the sufficiency of the evidence when appellant claimed that Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, reh. den., 444 U.S. , 100 S.Ct. 195, 62 L.Ed.2d 129 (1979), required that this Court review the sufficiency of the evidence under the standard "whether,

after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

This appeal is also taken from the judgment sustaining the conviction when the evidence adduced on the trial of this cause was legally insufficient to support the verdict under the constitutionally required reasonable doubt standard.

This appeal is taken pursuant to 28 U.S.C. 1257(2), since this Court has held Article 5, Section 5(C), La. Const. 1974, to be constitutional when same has been asserted by this Court to bar review of the type which is constitutionally required under Jackson v. Virginia, supra.

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Attorney for Appellant

CERTIFICATE OF SERVICE

I, F. Irvin Dymond, Attorney for Appellant and a Member of the Bar of the Supreme Court of the United States, certify that a copy of the foregoing Notice of Appeal to the Supreme Court of the United States has been served upon opposing counsel by United States Mail, first class postage prepaid, by depositing same in the United States Mail at a receptacle therefor provided at the First National Bank of Commerce Building, New Orleans, Louisiana 70112, the envelope bearing the following directions for delivery to opposing counsel:

Hon. William Guste
Attorney General of Louisiana

Attn: Criminal Division
Suite 700
2-3-4 Loyola Building
New Orleans, LA 70112

this 19th day of September, 1980.

All parties required to be served have been served.

F. IRVIN DYMOND
Attorney of Record for
Appellant Marcal